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WHO HAS THE BURDEN OF PROOF IN SETTING ASIDE RELEASES EXECUTED BY INJURED RAILROAD EMPLOYEES?

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When a railroad employee, after an injury, executes a general release to the railroad and subsequently institutes an action for the injuries received, who bears the burden of proving that the release represented a fair settlement to the railroad employee? This question was decided by the Supreme Court of the United States in 1948 in *Callen v. Pennsylvania Railroad*,[3] which holds that the burden of proving the release invalid is incumbent upon the railroad employee. The decision was close as four dissenting justices were inclined to the opinion that releases under the Federal Employers' Liability Act[4] should be governed by the same rule which applies to releases executed by seamen in admiralty, namely, that the burden of proving the release valid rests upon the shipping company. The minority of the Court approved the reasoning contained in the opinion of Judge Jerome Frank in *Ricketts v. Pennsylvania Railroad*[5] in 1946.

In the *Callen* case the railroad employee, subsequent to the injury and prior to the commecnement of suit, executed a general release to the raiload for the sum of $250.00. The release was executed in reliance upon the claim agent's assurance that "There was nothing wrong" and that he "could get back on the job." The claim agent admitted, firstly, that at the time of the settlement he did not know that the injured railroad employee was suffering from the injury which was described at the trial, and secondly, that the railroad had not procured any medical examination of the railroad employee. The claim agent testified that he determined the amount of the settlement on the basis of his belief that there was no liability. The railroad employee obtained a jury verdict for the sum of $24,990.00, which was reversed by the United States Court of Appeals for the Second Circuit, the Supreme Court of the United States affirming such reversal and remanding the case for a new trial.

In the *Ricketts* case a railroad dining car waiter was injured and later signed a general release, but subsequently claimed that he had executed the release under a misapprehension that the release was intended by him to apply only to tips and wages which he had lost and not to the injuries which he had received. The Court set aside the release.

The rule relating to seamen was announced by the Supreme Court of the

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3 92 L. Ed. 235 (1948).

4 U.S.C.A. chap. 3073, 34 Stat. 232; U.S.C.A. chap. 149, 35 Stat. 65; U.S.C.A. chap. 143, 36 Stat. 291.

5 153 F. 2d 757 (1946).

United States in 1942 in *Garrett v. Moore-McCormack Company*,[6] in which case the Court explained at length the reason why seamen should be treated in a special category, that any release executed by seamen should be scrutinized carefully by the Court, and that the burden of proving the validity of such a release in all cases is incumbent upon the shipping company.

A definite attempt was made by counsel representing the United Railroad Workers of America, C. I. O., who filed a brief in the *Callen* case on behalf of the Union, to persuade the Supreme Court of the United States to adopt the same rule with respect to railroad employees that it had adopted with respect to seamen. The Union argued that the railroad's position in the type of suit involved was particularly strong because it could wait and refuse to make any settlement whatsoever until such cases had run the gauntlet of the appellate courts. The Union called attention to the fact that, as the result of this situation, a railroad family in which the head of the family had been injured or killed might find itself in a position where it was without means of support for two or three years, pending the outcome of the litigation. It mentioned that, as the result of this economic strain, a railroad worker is often induced to make a settlement for a nominal sum in order to obtain funds with which to meet his immediate bills. The Union also pointed out that a railroad worker, when he is disabled, wishes to return to work as soon as possible in order to retain his seniority and his position on the payroll. For these reasons the Union sought to persuade the Supreme Court of the United States to hold that the burden of establishing the validity of a release be transferred from the railroad employee to the railroad, and called attention to the fact that since the railroad has superior facilities for determining injuries, it is in a better position to examine all the facts from a legal and medical standpoint and to determine with considerable certainty the probabilities of both speedy recovery and permanent disability.

Counsel for the injured man in the *Callen* case sought to persuade the Court that such a release, for a nominal sum, was violative of Section 5 of the Federal Employers' Liability Act which provides in substance that any contract to enable any common carrier to "exempt itself from any liability created by this chapter shall to that extent be void." The Court would not adopt this position, taking the view that a release is not "a device to exempt from liability but is a means of compromising a claimed liability and to that extent recognizing its possibility." The Court further stated that "where controversies exist as to whether there is liability, and if so, for how much, Congress has not said that the parties may not settle their claims without litigation." Thus, the Court held that it was for the Congress rather than the courts to amend the Federal Employers' Liability Act on this point, and that wihout such an amendment the Supreme Court of the United States must hold that the burden of proof of setting aside a release rests upon the injured railroad employee.

We now have a situation whereby the Supreme Court of the United States

[6] 317 U. S. 239 (1942).

has ruled that the burden of proof is on the railroad employee. But we also have outstanding the thoughtful opinion of Judge Frank in the *Ricketts* case which is opposed to the view of the Supreme Court and which may go far in influencing any possible amendment to the Federal Employers' Liability Act.

Much has been written in favor of the premise that an injured railroad employee is not in a secure position to protect his interests when he is dealing with a powerful business organization such as a railroad. Other employees are protected by Wokmen's Compensation Acts which provide for governmental supervision of settlements. What the injured railroad employee fears most is the long, protracted litigation which he realizes the railroad has the power and resources to wage, and when considering a prompt settlement he is more influenced by this fact than by any other save that of the necessity of meeting his current expenses which have been augmented by his disability and requisite medical care. The opinion of Judge Frank, therefore, sets forth a social policy which cannot be disregarded, especially in the light of the liberal policies of the present administration and its indulgent attitude toward organized labor. Judge Frank recognizes the fact that railroad employees, when they are injured, are at the mercy of the railroad company, and after analyzing the complicated legal aspects of the situation, he concludes that the liberal social policy which has been accorded to seamen is a policy which should be accorded to railroad employees as well.

Does this decision of the Supreme Court of the United States have any practical interest to Claim Departments at the present time? We submit that the closeness of the decision indicates clearly that whenever the opportunity presents itself the Supreme Court of the United States will look with careful scrutiny upon any general releases which are executed by injured railroad employees. However, there is a well-defined school of thought in the claim world which subscribes to the belief that a release is a release and that it is wise policy to procure a release even though it might be later set aside for any good and sufficient reason. This school of thought is now fortified by the *Callen* case so far as proof of validity is concerned. On the other hand, should Judge Frank's theory some day prevail, quick settlements might result in many an idle ceremony.

Counsel for the Pennsylvania Railroad warned the Court in the *Ricketts* case that if a release was executed by a railroad employee after advice of counsel, and in the absence of fraud on the part of the railroad, and later was disregarded by the courts, the railroads never would settle with their employees. Judge Frank dismisses this as a "glib prediction based on no evidence" and calls attention to the dire prophesies of counsel in 1894 who predicted that a Federal Income Tax Law would usher in a communistic regime in this country.[7]

Whatever the future position of the Supreme Court of the United States on this question, the trend to protect the employee whenever possible is evident, and it would seem wise for claim agents to become cognizant of the necessity for the exercise of greater caution in the quick settlement of claims.

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[7] Pollack v. Farmers' Loan and Trust Company, 157 U. S. 429 (1894).